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Before the
Federal Communications Commission
Washington, D.C. 20557
JUN 21 2 45 PM '93

MM Docket No. 92-204 BY

In the Matter of

Amendment of Section 73.202(b), RM-8058
Table of Allotments, RM-8081
FM Broadcast Stations. RM-8126
(Chenoa, Lincoln and
Pontiac, Illinois)¹

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 4, 1993;

Released: June 17, 1993

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making* ("Notice"), 7 FCC Rcd 5611 (1992), issued in response to a petition for rule making filed by L & M Broadcasting Company, Inc. ("L & M"), licensee of Station WESZ(FM), Channel 230A, Lincoln, Illinois, proposing the substitution of Channel 230B1 for Channel 230A at Lincoln, Illinois, and the modification of its license to specify operation on the higher class channel (RM-8058). Livingston County Broadcasters, Inc. ("Livingston"), licensee of Station WJEZ(FM), Channel 229A, Pontiac, Illinois, filed a petition for rule making requesting the substitution of Channel 229B1 for Channel 229A at Pontiac, Illinois, which we have treated as a counterproposal in this proceeding (RM-8081).² In response to the *Notice*, L & M filed comments reaffirming its intention to apply for Channel 230B1, if allotted. Livingston filed comments and a counterproposal seeking to change Station WJEZ's community of license from Pontiac, Illinois, to Chenoa, Illinois, and substitute Channel 229B1 for Channel 229A at Chenoa (RM-8126).³ Livingston's proposal to upgrade Station WJEZ(FM) on Channel 229B1 and its proposal to change the community of license from Pontiac to Chenoa for Station WJEZ(FM) on Channel 229B1 are

both mutually exclusive with L & M's proposal to substitute Channel 230B1 for Channel 230A at Lincoln, Illinois. L & M filed a statement for the record and reply comments. Livingston filed comments in response to the counterproposals. After the record closed, Livingston and L & M filed a joint petition requesting approval of a resolution agreement.⁴

2. Based on the above information, we believe the public interest would be served by substituting Channel 230B1 for Channel 230A at Lincoln and by substituting Channel 229B1 for Channel 229A at Pontiac, and by modifying the authorizations for Station WESZ(FM), Lincoln and Station WJEZ(FM), Pontiac, in accordance with Section 1.420(g) of the Commission's Rules. Channel 230B1 can be allotted to Lincoln in compliance with the Commission's minimum distance separation requirements with a site restriction 19.1 kilometers (11.9 miles) southwest, in order to avoid a short-spacing to Station WKZW(FM), Channel 227B, Peoria, Illinois.⁵ Channel 229B1 can be allotted to Pontiac in compliance with the Commission's minimum distance separation requirements with a site restriction 13.2 kilometers (8.2 miles) south, in order to avoid a short-spacing to Station WJTW(FM), Channel 228A, Joliet, Illinois and Station WGFA(FM), Channel 231B, Watseka, Illinois.⁶

3. We note that the allotment of Channel 229B1 to Pontiac at reference coordinates 40-45-53 and 88-35-28 will be short-spaced to a construction permit (File No. BPEX-920810MF) for experimental operation on Channel 228A at Urbana, Illinois. This construction permit would cause objectionable interference to Channel 229B1 at Pontiac. Since experimental operations are granted subject to summary rescission or modification without prior notice, right to hearing or any procedural recourse, U.S.A. Digital Radio, L.P. will be ordered to modify its construction permit or terminate operation on Channel 228A at Urbana, when Station WJEZ(FM) commences operation on Channel 229B1 at Pontiac. See 47 C.F.R. §74.112.

4. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 2, 1993, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Lincoln, Illinois	230B1
Pontiac, Illinois	229B1

¹ The communities of Chenoa and Pontiac, Illinois, have been added to the caption.

² Station WJEZ(FM) presently operates on Channel 276A. However, a *Report and Order* was adopted on December 12, 1990, in MM Docket No. 90-137 granting the substitution of Channel 229A for Channel 276A at Pontiac, Illinois. This action became effective February 19, 1991. See 6 FCC Rcd 26 (1991). An application (File No. BPH-920421IF) to increase Station WJEZ(FM)'s power to 6 kW on Channel 229A at Pontiac, Illinois, is pending.

³ Public Notice of the counterproposals was given November 24, 1992, Report No. 1919, (RM-8081, RM-8126).

⁴ In this resolution agreement, Livingston and L & M request that the Commission allot Channel 230B1 to Lincoln, Illinois, at reference coordinates 40-00-00 and 89-29-00 and Channel 229B1 to Pontiac, Illinois, at reference coordinates 40-45-53 and

88-35-28. This agreement eliminates the conflict between Livingston's and L & M's proposals. In accordance with Section 1.420(j) of the Commission's Rules, Livingston and L & M state that their agreement makes no provision for compensation by either party. Although the Commission's Rules do not contemplate the filing of pleadings beyond the comment and reply comment period, we believe acceptance of this pleading will serve the public interest, because this agreement resolves conflicting issues in this proceeding. In light of this agreement, we will dismiss Livingston's counterproposal to change its community of license from Pontiac to Chenoa, Illinois, and all comments responsive thereto will not be discussed.

⁵ The coordinates for Channel 230B1 at Lincoln are North Latitude 40-00-00 and West Longitude 89-29-00.

⁶ The coordinates for Channel 229B1 at Pontiac are North Latitude 40-45-53 and West Longitude 88-35-28.

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of L & M Broadcasting Company for Station WESZ(FM), Lincoln, Illinois, IS MODIFIED, to specify operation on Channel 230B1 in lieu of Channel 230A, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Livingston County Broadcasters, Inc., for Station WJEZ(FM), Pontiac, Illinois, IS MODIFIED, to specify operation on Channel 229B1 in lieu of Channel 229A, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

7. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, L & M Broadcasting Company, Inc., licensee of Station WESZ(FM), and Livingston County Broadcasters, Inc., licensee of Station WJEZ(FM), are required to submit a rule making fee in addition to the fee required for the application to effect the respective upgrades.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send a copy of this *Report and Order* by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the permittee of Channel 228A, Urbana, Illinois, as follows: U.S.A Digital Radio L.P., 1100 Wilson Boulevard, 27th Floor, Arlington, VA 22234.

9. IT IS FURTHER ORDERED, That the counterproposal filed by Livingston County Broadcasters, Inc., seeking to change the community of license from Pontiac to Chenoa, Illinois, and substitute Channel 229B1 for Channel 229A at Chenoa, Illinois, (RM-8126) IS DISMISSED.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau